

Mr Sanjay Vashishth, Advocate.

This petition under Section 482 CrPC has been filed seeking quashing of FIR 269 dated 9.10.2006 (Annexure P1) registered at Police Station Hodal, District Faridabad for the offences under Sections 420, 406 and 120-B IPC and all consequential proceedings arising therefrom.

The FIR has been registered on the statement of the complainant – Rajesh Sharma who has alleged that on 12.5.2004 he had entered into an agreement to sell in respect of land measuring 20 Kanals 8 Marlas with Brij Bihari @ Kunj Bihari (petitioner-1) son of Roshan Lal (petitioner-2). The complainant had given an advance of Rs 4.50 lakhs and Rs 1.00 lakh was to be given at the time of registration of the sale deed on 12.4.2005. However, the owners of the land did not turn up for the execution and registration of the sale deed. The complainant got his presence marked in the Tehsil Office. Thereafter, the complainant also served a notice through his counsel on 20.4.2005. After the last date for execution of the sale deed i.e. 12.4.2005, Brij Bihari (petitioner-1) executed a registered sale deed in the name of his brother-in-law with intention to get it cancelled later. In this manner, the complainant has been defrauded by the petitioners.

Learned counsel for the petitioners submits that the dispute between the parties is purely of a civil in nature and no criminal liability can be fastened on the petitioners. It is also submitted that a civil suit is pending between the petitioners and the complainant with regard to execution and registration of the sale deed. A copy of the plaint of the civil suit is Annexure P4. It is also submitted that cancellation report has been

filed qua Roshan Lal and the same is pending consideration before the trial Court. The charge in then case has not been framed so far.

After giving my thoughtful consideration to the matter, it may be noticed that the charge in the case has not been framed so far. Besides, the cancellation report has been filed in respect of Roshan Lal (petitioner-2). The same is pending consideration before the trial Court. Therefore, it would be appropriate that the contentions as raised by the learned counsel for the petitioner in the present petition are urged before the learned trial Court itself at the time of consideration of framing the charge. It is well known that a Court, at the time of framing the charge is to sift and weigh the evidence for the limited purpose of finding out whether a prima facie case has been made out or not and it does not act merely as a mouth piece or a post office of the prosecution. The total effect of the material and documents on record are to be considered for the purpose of consideration for framing the charge.

Keeping in view the fact that cancellation report against Roshan Lal (petitioner-2) has been filed and also the fact that the grounds raised herein can also be raised at the time of consideration of framing the charge, it would be just and expedient that the contentions raised as regards the dispute being only of a civil in nature, are considered by the trial Court in accordance with law.

Consequently, the criminal misc petition, in the light of the observations made above, is dismissed.

21.8.2007.
ASR

(S.S.SARON)
JUDGE